IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1848 OF 2003

1)	Shri. Paramnath Shitlaprasad Mishra]	
2)	Shri. Kashinath Ramcharit Upadhyay]	
3)	Shri. Kameshwar Rajkaran Zha]	
4)	Shri. Kashinath Satyappa Gundal]	
5)	Shri. Arun Babaji Bhatkar]	
6)	Shri. Ashok Raghunath Thakur]	
7)	Shri. Dattatray Padmakar Patil]	
8)	Shri. Pandurang Rajaram Parab]	
9)	Smt. Sangita Ramesh Chavan]	
10)	Shri. Baburao Javrya Patil]	
11)	Shri. Ramesh Shankar Chavan]	
12)	Shri. Mehbook Ali Abdul Nabi]	
13)	Shri. Sitaram Nanu Pawar]	
14)	Shri. Gajanan Anant Vaykul]	
15)	Shri. Sahadeo Pundlik Palav]	PETITIONERS
16)	Shri. Ramji Melhusingh Yadav]	
17)	Shri. Shivdhari Bhrigunath Jaiswar]	
18)	Shri. Mahadeo Vishnu Bagwe]	
19)	Shri. Nandkumar Dagdu Patil]	
20)	Shri. Kisan Savaru Jaiswar]	
21)	Shri. Satyavan Mahadeo Surve]	
22)	Shri. Vijay Shankar Masurkar]	
23)	Shri. Saheb Husen Usman Mulla]	
24)	Shri. Pandurang Shankar Divekar]	

25) Shri. Maruti Vitthal Deolekar]

26) Shri. Maruti Dinkar Yeram]

27) Shri. Dattaram Sadashiv Nemlekar]

28) Shri. Prakash Harishchandra Shinde]

All r/o : C/o Bhaurao Javrya Patil]
47-A, Bhopi House,]
Walmiki Chowk,]
Worli Village, Mumbai- 25]

Versus

1) The Bombay Dyeing & Mfg. Co. Ltd.]
(Textile MIlls),]
New Prabhadevi, Mumbai - 400 025]
]
2) Rashtriya Mill Mazdoor Sangh]
G.D. Ambedkar Marg, Parel,]
Mumbai - 400 012] RESPONDENTS
]
3) The Registrar]
Under the Bombay Industrial]
Relations Act, having his Office]
in the Office of the Commissioner]
of Labour, Commerce Centre,]
Tardeo, Mumbai - 400 034.]

Mr. N.M. Ganguli Advocate for the Petitioners.

Mr. P.K. Rele, Senior Advocate with Mr. Santosh Shetty for Respondent no. 1.

Ms. N.D. Buch with Ms. B.B. Dholakia for Respondent no. 2.

CORAM : ABHAY S. OKA, J.

DATE : 14TH JULY 2006.

JUDGMENT

1) By this Petition under Article 226 of The Constitution of India, the Petitioners have taken exception to the Judgment and Order dated 21st March 2003 passed by the learned Member of the Industrial

Court by which complaint (ULP) No. 669 of 1995 and complaint (ULP) No. 1322 of 1998 were dismissed.

2) Complaint number 669 of 1995 was filed by the Petitioners and eight others against the first Respondent and its Officers. The complaint was filed alleging commission of unfair labour practice covered by Items 9 and 10 of Schedule IV of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. (hereinafter referred to as "the said Act of 1971"). The complaint was filed by invoking the provisions of Section 28 of the said Act of 1971.

3) In the said complaint, it was stated that the complainants were workers of first Respondent. The complainants were working as permanent employees in the Texturising Department of the first Respondent-Company. It is stated that in the said Department filament yarn is produced which is used for producing 100% polyester or mixed blended cloth. According to the case of the complainants, there are two machines in the said Department having a capacity of production of 2 to 2.5 tons. It is stated that initially the first Respondent was manufacturing 100% polyester, but subsequently the said Company changed the production and started producing terri-cotton cloth. It is alleged that for producing terri-cotton cloth, filament yarn is also needed.

4) The allegation of the complainants is that the first Respondent- Company is a composite Textile Mill which having about 3,000 workers. It is stated that there are two Units of the Company and one of the Unit is at Naigaon, Mumbai. According to the case of the complainants, 63 workers were working in Texturising Department. On 15th April 1992, the first Respondent entered into an Agreement and reduced the number of employees. It is alleged that with a view to further reduce the number of employees, the workmen are being sent to other Departments. It is alleged that machines are purposefully kept closed. It is alleged that though the first Respondent- Company needs texturised yarn for production of terri-cotton, the permanent workers are being denied the work and the said work is being done from outside. It is contended in the complaint that Bombay Industrial Relations Act, 1946 (hereinafter referred to as "the said of 1946") is applicable to the first Respondent. A legal notice to change is mandatory while decreasing the number of workers in a Department or before shifting machines or workers. It is contended that after issuance of notice of change, an agreement is required to be signed and is required to be registered in accordance with the provisions of the said Act of 1946. It is alleged that without following the procedure contemplated by law, the first Respondent has reduced the number of workers in the Texturising Department. It is alleged that said

Act is patently illegal. It is further alleged in the complaint that change in the production process, decrease in number of the workers working in Texturising Department and increase in number of the workers in other Departments amounts to unfair labour practice which is covered by Item 9 of Schedule IV of the said Act of 1946. It is alleged that the first Respondent and its Officers are threatening the workers and are sending them to other Departments. It is alleged that said action amounts deliberate act of coercion and is an unfair labour practice under Item 10 of Schedule 4 of the said Act of 1971.

5) During the pendency of the said complaint, the other complaint being Complaint (ULP) no. 1322 of 1998 was filed by the Petitioners. Apart from the first Respondent and its Officers, the Registrar appointed under the said Act of 1946 as well as the second Respondent "Rashtriya Mill Mazdoor Sangh" were impleaded as party- opponents to the said complaint. Before coming to the averments made in the said subsequent complaint, it must be noted here that the 2nd Respondent made an application in the earlier complaint referred to above praying for impleading itself as a complainant. The said application was allowed by the Industrial Court. The original complainants in the said earlier complaint filed a Writ Petition in this Court for challenging the said order.

6) The allegation in a subsequent complaint No. 1322 of 1998 is that an agreement was entered into on 23rd July 1998 by and between the 1st and 2nd Respondents which provides for the closure of the entire Texturising Department. It is alleged that no notice of change was displayed in the Department and the consent of the concerned workers was not obtained. The complainants in the said complaint raised an objection to the said agreement before the Assistant Registrar appointed under the provisions of the said Act of 1946. It is alleged in the complaint that the first Respondent shifted all the machines in the Texturising Department on 20th April 2002. The machines were shifted to the premises of Spring Mills. It is alleged that two texturising machines and a Beninger warping machine were shifted from the Texturising Department. It is stated that the said warping machine was kept idle in violation of the agreement dated 23rd July 1998 executed by and between 1st and 2nd Respondents. It was alleged that the first Respondent by entering into an agreement for closure of the Texturising Department has acted in breach of order dated 1st November, 1996 passed by this Court by which the 1st Respondent was restrained from shifting the machines and from closing the texturising Department. It was therefore alleged that the Respondent in the complaint had engaged in unfair labour practice covered by Item 9 of Schedule IV of the said Act of 1971.

7) By the impugned Judgment and Order, the learned Member of the Industrial Court dismissed both the complaints. In both the complaints, a finding was recorded by the learned Member that the complainants in both the complaints as individual employees had no right to file complaints. It was held that the subsequent complaint no. 1322 of 1998 was not maintainable in view of pendency of the earlier complaint no. 669 of 1995. It was held that the Industrial Court had no jurisdiction to try the complaints filed by individual employees in view of the fact that only the representative union can act on behalf of the employees in view of applicability of the provisions of the said Act of 1946 to the first Respondent. The learned Member of the Industrial Court has observed that the agreement in question has been duly registered with the Registrar under the provisions of the said Act of 1946. It was held that only the representative union has a right to act and represent the employees in such matters and therefore, the complaints filed under the said Act of 1971 were not maintainable. The learned Member of the Industrial Court also held that the action of the first Respondent was not of a closure but was of dis-continuation of the work in Texturising Department. It was held that no one has been retrenched or terminated except one employee after the dis-continuation of the work in Texturising Department. It was also observed that said employee was dismissed after holding a departmental

enquiry against him. It was held that the action of the first Respondent was not at all of closure.

8) Mr. Ganguli, learned Counsel appearing for the Petitioners submitted that individual employees can always file a complaint where unfair labour practice alleged is covered by Item No. 9 and 10 of the said Act, 1971. He submitted that the learned Member of the Tribunal mis-construed the ratio of decision in the case of Shramik Utkarsh Sabha v/s Raymond Woolen Mills Ltd. & Ors. (1995 I CLR 607). He submitted that the complaints were filed under the provisions of the said Act of 1971 and not under the provisions of said Act of 1946 and therefore it was not necessary that only a representative Union could have acted on behalf of employees. He submitted that on plain reading of the provisions of the said Act of 1971, individual employees had a right to file complaint where unfair labour practice complained of was under the Items 9 and 10 of Schedule IV. He submitted that under the provisions of said Act, only when the conduct complained of is covered by Item 2 and 6 of Schedule IV of the said Act of 1971, the representative Union has exclusive right to file a complaint and in case of all other categories of unfair labour practices, individual employees have right to file complaint. He, therefore, submitted that the learned Member of the Tribunal has committed a clear error by holding that the complaints were not maintainable. He placed reliance on the

decision of a Judgment of Division Bench of this Court in the case of Warden and Co. (India) Ltd., Bombay Vs. Akhil Maharashtra Kamgar Union, Thane (2001 II CLR 359) in support of his submissions. He submitted that the decision of the Apex Court in the case of Shramik Utkarsh Sabha Vs. Raymond Woollen Mills Ltd. & Ors. (1995 I CLR 607) will not help the Respondents.

9) Shri. Rele, learned seniour Counsel appearing on behalf of the first Respondent also relied upon the decision of Apex Court in the case of Shramik Utkarsh Sabha Vs. Raymond Woollen Mills Ltd. & Ors. (supra). He invited my attention to another Judgment of Supreme Court in the case of Santuram Khudai Vs. Kimatraj Printers Processors and others [SC(1) LLJ page 174] and submitted that only a representative union has right to represent employees as the first Respondent is governed by the provisions of the said Act of 1946. He submitted that the decisions relied upon by the learned counsel for the Petitioners are against him. He submitted that the Industrial Court was justified in taking the view which has been taken. He pointed out that the Industrial Court has held even on merits the Petitioners have no case. The learned counsel for the second Respondent supported the submissions made by the learned counsel for the first Respondent.

10) I have considered the submissions. The learned counsel for the Petitioners has placed reliance on the

decision of Division Bench of this Court in the case of Warden & Co. (India) Ltd., Bombay Vs. Akhil Maharashtra Kamgar Union, Thane (supra). The said judgment was delivered in a Letters Patent appeal arising out of a writ petition filed in this Court. The writ petition arose out of a complaint filed by the workmen alleging commission of unfair labour practices under Item 9 and 10 of Schedule IV of the said Act of 1971. The question before the Division Bench was whether un-recognised union is entitled to act on behalf of the workmen of an industry which is governed by the Industrial Disputes Act, 1947 (hereinafter referred to as "the said Act of 1947"). In Paragraph 25 of the decision, the Division Bench formulated the question for consideration, which reads thus :

> "25. The question therefore is, whether it is the exclusive right of a recognised Union to represent employees in a complaint relating to unfair labour practice other than those mentioned in items 2 and 6 of Schedule IV of the MRTU & PULP Act.".

The said question was answered by the Division Bench in Paragraph no.33 which reads thus :

> "33. Having given our fullest consideration to this submission, we are of view that sections 20 and 22 which confer rights on recognised and unrecognised Union, respectively, are not determinative of the rights of Unions to appear in complaints relating to unfair labour practices. What is determinative as of the right to appear is section 21(1) of the MRTU & PULP Act read with Section 28 of the MRTU & PULP Act, which have the following effect :-
>
> (a) That any Union or any employee

> or Investigating Officer may file a complaint for any unfair labour practice against an employer by virtue of section 28 of the MRTU & PULP Act.
>
> (b) Where the unfair labour practice complained of is in regard to items 2 and 6 of Schedule IV of the MRTU & PULP Act, the same can only be prosecuted by a recognised Union by virtue of section 21 (1) of the MRTU & PULP Act".

. A submission was made before the Division Bench on the basis of the decision of the Apex Court in the case of Shramik Utkarsh Sabha Vs. Raymond Woollen Mills Ltd. & Ors. (supra). The said submission was dealt with by the Division Bench in Paragraph No. 36, which reads thus :

> "36. Since the case before us is different in that it concerns the right on an unrecognised Union in an industry to which the I.D. Act applies to file or prosecute a complaint under the MRTU & PULP Act, we have ourselves perused the statutory scheme and we find ourselves in agreement with the submission that the law laid down in Raymond case was not in respect of a matter arising in an industry where the I.D. Act applies, but a matter relating to an industry governed by the Bombay Industrial Relations Act".

Thus it is apparent that the question which is required to be considered in this petition did not arise before the Division Bench. The Division Bench was dealing with the case where the industry was governed by the said Act of 1947. In this petition, we are concerned with an industry which is governed by the said Act of 1946 which contains completely different provisions.

In fact as noted by the Division Bench in the aforesaid case, the term representative Union does not exist in the said Act of 1947 and it does exist in the said Act of 1946.

11) In the case of Shramik Utkarsh Sabha Vs. Raymond Woollen Mills Ltd. & Ors. (supra), the question for consideration before the Apex Court was as under :

> "3. The question for consideration in this appeal is : does a representative union under the Bombay Industrial Relations Act, 1946 (BIR Act) have the exclusive right to represent the employees of the concerned industry in complaints relating to unfair labour practices under the Maharashtra Recognition of Trade Unions And Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) other than those specified in items 2 and 6 of Schedule IV thereof?"

The Apex Court in Paragraph No. 14 has answered the said question, which reads thus :

> "14. Section 21 of the M.R.T.U. and P.U.L.P. Act, upon which emphasis was laid on behalf of the appellants, states that no employee in an undertaking to which the provisions of the Industrial Disputes Act applies shall be allowed to appear or act or be allowed to be represented in any proceeding relating to the unfair labour practices specified in items 2 and 6 of Schedule IV except through the recognised union. It is important to note that the reference is to employees in an undertaking to which the Industrial Disputes Act applies and not to employees in an undertaking to which the B.I.R. Act applies. Apart therefrom, the section permits an employee, not an union other than the recognised union, to so appear. The provisions of Section 21 do not, therefore, lead to the conclusion that an union other than a representative union can appear in

> proceedings relating to all unfair labour practices other than those specified in items 2 and 6 of Schedule IV."

The Apex Court was dealing with a case where the employer - Company was governed by the provisions of the said Act of 1946. The employer filed a complaint alleging unfair labour practice mentioned in Item 5 and 6 of Schedule III of the said Act of 1971. An application was filed in the complaint by Shramik Utkarsh Sabha seeking impleadment in the complaint.The application was rejected by the Industrial Court. In Writ Petition filed by the Shramik Utkarsh Sabha, the High Court had held that the representative union, i.e. the Shramik Utkarsh Sabha had sole privilege of representing employees in the industry of the first Respondent.

12) A learned Single Judge of this Court had occasion to consider the decision in the case of Shramik Utkarsh Sabha. The decision of the learned Single Judge is in the case of Bajirao Rajaram Patil Vs. Maharashtra State Co-operative Bank Ltd. and another [1996 (I) L.L.J. Page 171]. The learned Single Judge was dealing with a case where the Petitioner was employee of the Undertaking to which the said Act of 1946 was applicable. The question before the learned Single Judge was whether the complaint filed by the Petitioner - employee under Item 3 of Schedule IV of the said Act of 1971 could be filed by

the affected employee or has to be filed by the representative union. The learned Single Judge referred to provisions of Section 21 of the said Act of 1971 and in particular to Sub Section 2 thereof. The learned Single Judge also considered the provisions of Section 28 of the said Act of 1971. The learned Single Judge extensively referred to the decision of the Apex Court in the case of Shramik Utkarsh Sabha (supra). The learned Single Judge answered the question in Paragraph 16 of said judgment, which reads thus :

> "16. A plain reading of sub-section (1) of Section 28 would show that any union or any employee or any employer or any Investigating Officer aggrieved by act of any person who is engaged in or is engaging in any unfair labour practice may file a complaint within 90 days of occurrence of such unfair labour practice before the competent Court. **Section 28 of course has to be read with other provisions of M.R.T.U. and P.U.L.P. Act including Sections 20 and 21, but where the alleged unfair labour practice in the complaint is not covered by Sections 20 and 21, it is clear that any affected employee in an undertaking to which Industrial Disputes Act applies or in an undertaking to which Bombay Industrial Relations Act, as the case may be may file complaint aggrieved by an unfair labour practice and it cannot be said that such complaint has to be filed by a recognised union or representative union. As already indicated above, in the present case, the employee belongs to an undertaking to which Bombay Industrial Relations Act applies and he has challenged his transfer order whereby he has been transferred by the employer from Nasik to Bombay, and, according to the employee such transfer order is unfair labour practice under Items 3 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Obviously and apparently such complaint is not covered by Section 21(2) of the Act and, therefore, there being no other bar under M.R.T.U. and P.U.L.P. Act in filing such complaint by an affected employee, it**

> **cannot be said that such complaint was not maintainable having not been filed by representative union"**. (emphasis supplied)

13) The present complaints which are subject matter of this Writ Petition are not under Items 2 and 6 of Schedule IV of the said Act of 1971. Therefore, the view taken by the learned Member of the Industrial Court as regards maintainability of the complaints is erroneous. There is another decision of the learned Single Judge of this Court in the case of Rama Bala Kate and Ors. Vs. Walchandnagar Industries Ltd. & Ors. (1996 [I] LLJ 713) which takes the view which is taken in the case of Bajirao Rajaram Patil Vs. Maharashtra State Co-operative Bank Ltd. and another (supra).

14) After holding that the complaints were not maintainable, the learned Member of the Industrial Tribunal has dealt with the merits of the case in both the complaints. The first complaint has been filed before execution of Agreement dated 23rd July, 1998. In the second complaint, the challenge is to the legality and validity of the said agreement.

15) It will be necessary to refer the facts of the case. On the date of the said agreement, the second Respondent herein was the representative Union. The agreement records that the Texturising Department consisted of 50 to 55 employees. The agreement refers

to the notice of change. The agreement records that the management shall dis-continue the working of Texturising Department with immediate effect. The agreement provides that wages of the workers will not be affected and they shall continue to draw the existing wages. It was agreed that the management will provide suitable alternate jobs to the affected workers in the Texturising Department without affecting their wages. It was provided that the concerned workers will have to undergo training for a reasonable period with usual pay and after completion of training, they will be transferred in the respective departments where they will be regularly provided with work. The agreement also stipulates that in case of those employees of the Texturising Department, who will opt for voluntary retirement scheme, the Management will apply the scheme and after paying legal dues to those who opt for the scheme will abolish the concerned posts. The agreement was executed in accordance with provisions of Section 44(1) of the said Act of 1946. Some of the Petitioners raised objections to the registration of the said agreement. The Registrar ordered registration of the agreement on 15th October 1998. As stated earlier, the agreement was preceded by notice of change dated 25th March 1995.

16) The notice of change provides that 36 permanent employees working in the Texturising Department will be transferred to other departments without affecting

their wages and other benefits. It also provides for extending voluntarily retirement scheme to the employees of the Texturising Department. There is no dispute that notice of change was given by the first Respondent. The agreement under Section 44(1) of the said Act of 1946 has been duly registered on 15th October, 1998. The second Respondent - Union being a representative union has entered into the said agreement. The said union being a representative union has sole collective bargaining power.

17) The learned Member of the Industrial Court after considering the material on record has rightly held that closure of Texturising Department does not result in retrenchment of the employees in the said department and in fact the concerned employees were given option either to join other departments without affecting wages or to opt for voluntary retirement. The material on record shows that the Texturising Department was started in the year 1980 by transferring employees of other departments to the said department. It is also not in dispute that on the basis of notice of change dated 25th October 1991 an agreement was entered into on 15th April 1992 by which posts in Texturising Department were reduced. That agreement was not challenged. There is nothing on record to show that any employee was forced to accept voluntary retirement scheme after execution of the Agreement dated 23rd July 1998. A finding of fact has been

recorded by the learned Member that there was no evidence regarding use of force or use of threatening language which compelled the employees to go to other departments.

18) An attempt was made before the learned Industrial Court to submit that warping machine was not installed after it was shifted from Texturising Department, which is contrary to the agreement dated 23rd July, 1998. However, the agreement provides that the Company is bound to run the said machine in one or two shifts as per the exigencies of the workload requirement. There does not appear to be violation of any terms of the agreement.

19) Another argument was that the agreement is entered into in breach of order dated 1st November 1996 passed in Writ Petition 4936 of 1996. In the said writ petition, order was passed directing the first Respondent not to shift a winding machine from Texturising Department. There was no order preventing execution of agreement.

20) I find no reason to disturb the findings recorded by the learned Member of the Tribunal on merits of the complaints.

21) There is no merit in the Writ Petition and the same is dismissed with no order as to costs.

(ABHAY S. OKA, J.)